

IN THE COURT OF APPEALS OF TENNESSEE
AT NASHVILLE
April 10, 2008 Session

**Norma Taylor v. Metropolitan Government of Nashville and Davidson
County, TN, The Employee Benefit Board of the Metropolitan Government of
Nashville and Davidson County, TN.**

**Appeal from the Circuit Court for Davidson County
No. 01C-8841 Walter Kurtz, Judge**

No. M2007-01774-COA-R3-CV - Filed December 19, 2008

Defendant appeals the trial court's denial of motions for directed verdict made after the close of the plaintiff's proof and after the close of all proof, and appeals the trial court's denial of a motion for a new trial. Finding that the trial court erred in not granting the defendant's motion for a directed verdict because the claim was time-barred by the applicable statute of limitations, we vacate the judgment below and dismiss the case.

**Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Circuit Vacated and Case
Dismissed**

RICHARD H. DINKINS, J., delivered the opinion of the court, in which ANDY D. BENNETT, J., joined. PATRICIA J. COTTRELL, P. J., M. S., not participating.

Dan Richard Alexander, Nashville, Tennessee, for the appellee, Norma Taylor.

James Earl Robinson, Kevin C. Klein and Sue Cain, Nashville, Tennessee, for the appellant, Metropolitan Government of Nashville and Davidson County, TN, The Employee Benefit Board of the Metropolitan .

OPINION

I. Procedural History

This case comes before this Court for a second time. On July 18, 2001, Norma Taylor, Dot Bush Goot, and Bobbie Jane Duke filed suit against Metropolitan Government of Nashville and Davidson County ("Metro") in the Chancery Court of Davidson County for negligent and intentional misrepresentation (tort claims), breach of fiduciary duty, and breach of contract. On December 7, 2001, the case was transferred to the Circuit Court of Davidson County. On January 14, 2002, the

plaintiffs filed an amended complaint, further specifying Metro's actions which gave rise to the claim.

On October 15, 2002, Metro filed a motion for summary judgment seeking dismissal of all claims. On January 15, 2003, the trial court granted the motion in regard to the tort claims, but denied it in regard to the breach of contract claim.¹

A jury trial was held on June 17 and 18, 2003, on the breach of contract claims only. At the conclusion of the plaintiffs' proof, Metro moved for a directed verdict to dismiss the claims on multiple grounds, which the trial court granted on the ground that the plaintiffs had failed to prove the terms of the life insurance contract by not introducing a copy of the agreement. The order granting the directed verdict motion was issued on July 15, 2003.

On appeal to this Court, the plaintiffs challenged the grant of summary judgment on the tort claims, and the grant of a directed verdict on the breach of contract claims. On November 9, 2005, this Court affirmed the dismissal of the tort claims, but reversed the grant of the directed verdict on the breach of contract claims, finding that the plaintiffs were not required to introduce a copy of the group life insurance contract containing the waiver of premium benefit because Metro never denied the existence of the contract or the terms of the waiver of premium benefit in its pleadings or its pre-trial representations to the court. The case was remanded to the trial court.

On April 3, 2006, Metro filed an answer to the plaintiffs' amended complaint, raising the affirmative defenses of statute of limitations, laches, and estoppel. Metro thereafter resolved the cases filed by Ms. Goot and Ms. Duke, but not Ms. Taylor.²

The breach of contract claim filed by Ms. Taylor was retried from April 23 to April 25, 2007. Metro moved for a directed verdict at the conclusion of Ms. Taylor's proof, claiming that the cause of action was time-barred; the trial court denied the motion. At the conclusion of all proof, Metro renewed its motion for a directed verdict, which the court again denied.

On April 25, 2007, the jury returned a verdict against Metro for damages in the amount of \$42,500. The court entered an order consistent with the jury's verdict on May 4, 2007.

On May 29, 2007, Metro moved for judgment notwithstanding the verdict or, in the alternative, for a new trial, arguing that the claim was time-barred, that the jury instructions failed to adequately and accurately explain the statute of limitations defense, and that the jury's verdict was against the great weight of the evidence. The court denied the motions, and Metro appealed on August 2, 2007.

¹ Neither the Appellant's nor the Appellee's brief discusses the disposition of the breach of fiduciary duty claim, and it is not an issue raised by either party on appeal.

² Norma Taylor is the only remaining plaintiff from the original action, and the only plaintiff in this appeal.

II. Factual Background

Clyde Taylor was an officer with the Metropolitan Police Department who became ill and took disability status on September 1, 1992. He applied for disability benefits on May 14, 1992, and his application was approved in August of 1992. Mr. Taylor continued to collect disability benefits until his death from multiple cardiovascular ailments on April 7, 2000. Following his death, Ms. Taylor received \$7,500 in life insurance proceeds from her husband's policy.

Metro provides a life insurance program to all employees, including those who stop working due to a disability. Employees who are unable to work will receive life insurance coverage in the amount equal to coverage for a retiree, which, at the time material to this appeal, was \$7,500. However, disabled employees can apply for a free "waiver of premium" benefit if they qualify; this benefit allows a disabled employee to receive life insurance coverage at a rate of two times the employee's annual salary, up to \$50,000. Mr. Taylor earned \$32,000 a year, so if he received the waiver of premium benefit, he would have been entitled to \$50,000 in life insurance coverage; without it, he only received \$7,500 in benefits.

To qualify for the waiver of premium benefit, a disabled employee must meet the following criteria: (1) the applicant must be "totally disabled," which means completely prevented by injury or sickness from doing any work for which the individual is fitted; (2) the applicant must make application within one year of going on pension; and (3) the applicant must be under 60 years of age. Pursuant to Section 13.05(b) of the Metropolitan Charter, Metro's Benefit Board was obligated to "communicate to officers and employees of the metropolitan government, the system of employee benefit plans for officers and employees..."

At trial, Ms. Taylor asserted that her husband failed to apply for the waiver of premium benefit within the one-year time period because Metro breached its legal obligation under Section 13.05(b) of the Metropolitan Charter to inform him of the availability of such a benefit. Ms. Taylor testified that she learned of the waiver of premium benefit after Mr. Taylor's death in 2000 from Phyllis West, a member of the Metro's Benefit Board. Ms. Taylor testified that, when she went through her husband's records after his death, she did not find anything that mentioned the waiver of premium benefit. Ms. Taylor alleged that she knew of the cause of action against Metro, at the earliest, in 2000.

Metro raised two arguments at trial: (1) that Mr. Taylor was informed of the waiver of premium benefit when he first took disability status, and (2) that, in the alternative, the cause of action is barred by the six-year statute of limitations. Metro first argued that Mr. Taylor was informed about the waiver of premium benefit at the time of his application for disability benefits in 1992. Metro stated that, beginning in 1990, every individual applying for disability benefits would receive an informational letter that notified employees of the waiver of premium benefit. Metro conceded that Mr. Taylor's file did not contain the informational letter, but it still asserted that he was informed of the waiver of premium benefit.

Metro's other argument was that the statute of limitations on the cause of action accrued, at the latest, in 1993 when Ms. Taylor and her husband had sufficient knowledge to put a reasonable person on notice that they may have suffered an injury, making the complaint filed in 2001 beyond the six-year statute of limitations. Metro asserted that Ms. Taylor and her husband were sufficiently informed of the waiver of premium benefit in 1993 because of discussions Ms. Taylor had at that time with another police officer and with an employee of Metro's Benefit Board. Metro asserted that Mr. and Ms. Taylor should have known of the injury in 1993 when, upon questioning by Ms. Taylor, Mr. Taylor revealed that Metro never informed him of the waiver of premium benefit. Metro's argument was that the accrual of any cause of action began in 1993 when Ms. Taylor and her husband had sufficient knowledge of the existence of the waiver of premium benefit and knowledge that Mr. Taylor was never informed of the benefit to which he was entitled.

During the jury deliberations, the jury foreman submitted a question to the court regarding one of the jury interrogatories which asks "[d]o you find that in 1993 Mr. Taylor knew, or by the exercise of reasonable care and diligence should have known, that the Metropolitan Government had violated its contractual obligation by not having adequately notified him of his eligibility for the 'waiver of premium benefit' that was available?" The jury's question was "[i]f the jury feels Metro failed to adequately inform Mr. Taylor of his waiver of premium benefits, our answer to Question No. 1 should be no?" Outside the presence of the jury, the court admitted to the parties that it "had not made it clear [to the jury] that Question No. 1 relates specifically to the statute of limitation issue," and that it should be evaluated independent of the liability issue.

The judge called the jury back into the courtroom and responded to their question in the interrogatory by stating:

Question No. 1 relates entirely to the statute of limitations issue. And the reason why it asks you a question about 1993 is because you need to make a judgment about whether Mr. Taylor should have known he had this cause of action in 1993. And if your answer to that is that he did, then the six-year statute of limitations would apply and the case should be dismissed.

Now, the plaintiff takes the position that Mrs. Taylor really didn't learn about it until 2000. And if that's the case, then you answer it the other way and this case goes forward and you go on to the other two questions.

The jury returned a finding that Mr. Taylor did not know of the cause of action in 1993, that Metro did not comply with its obligations to inform Mr. Taylor of the benefit, and that Metro was in breach of this obligation. The jury awarded Ms. Taylor \$42,500 in damages, which is the difference between the \$50,000 she should have been entitled to under the waiver of premium benefit, and the \$7,500 she was paid without it.

STATEMENT OF THE ISSUES

On appeal, Metro raises the following issues:

1. Whether the trial court erred in not granting Metro's motion for directed verdict because the cause of action was time-barred by the statute of limitations.
2. Whether the trial court erred in denying Metro's motion for a new trial because the jury's verdict was against the great weight of the evidence.

ANALYSIS

I. Directed Verdict

The Tennessee Supreme Court in *Johnson v. Tennessee Farmers Mut. Ins. Co.*, 205 S.W.3d 365 (Tenn. 2006) addressed the standard of reviewing a trial court's denial of a directed verdict:

In reviewing the trial court's decision to deny a motion for a directed verdict, an appellate court must take the strongest legitimate view of the evidence in favor of the non-moving party, construing all evidence in that party's favor and disregarding all countervailing evidence. A motion for a directed verdict should not be granted unless reasonable minds could reach only one conclusion from the evidence. The standard of review applicable to a motion for a directed verdict does not permit an appellate court to weigh the evidence. Moreover, in reviewing the trial court's denial of a motion for a directed verdict, an appellate court must not evaluate the credibility of witnesses. Accordingly, if material evidence is in dispute or doubt exists as to the conclusions to be drawn from that evidence, the motion must be denied.

Johnson v. Tennessee Farmers Mut. Ins. Co., 205 S.W.3d 365, 370 (Tenn. 2006) (internal citations omitted).

Metro asserts that the trial court erred in not granting its motion for a directed verdict because Ms. Taylor and her husband had sufficient knowledge in 1993 to begin the running of the statute of limitations on the cause of action, making her complaint filed in 2001 time-barred. In support of its contention, Metro cites the testimony of Ms. Taylor that, in 1993, she knew of the waiver of premium benefit and its purpose; she knew her husband was ineligible for the benefit because he failed to apply within one year of taking disability status; and she knew that her husband missed the one-year application period because Metro had not informed her husband of the benefit. Ms. Taylor counters that the claim accrued in 2000 when she spoke with Ms. West and learned of Metro's obligation, set forth in the Metropolitan Charter, to notify her husband of the availability of the benefit, placing the discovery of the cause of action within the statute of limitations period.

In accordance with *Johnson v. Tennessee Farmers Mut. Ins. Co.*, and viewing the evidence in Ms. Taylor's favor, we find that the cause of action accrued in 1993 and, consequently, Metro's motion for directed verdict should have been granted, as Ms. Taylor's claim was barred by the statute of limitations.

"Whether a claim is barred by an applicable statute of limitations is a question of law." *Brown v. Erachem Comilog, Inc.*, 231 S.W.3d 918, 921 (Tenn. 2007). However, the issue of when a claim accrued, for purposes of determining whether the statute of limitations has run, can be either a question of fact for the jury or a question of law for the court. *Osborne Enter., Inc. v. City of Chattanooga*, 561 S.W.2d 160, 165 (Tenn. Ct. App. 1977). This Court has distinguished between situations when the accrual of a cause of action is a question of fact and when it is a question of law:

The time of the accrual of the cause of action, as affecting the running of the statute of limitations, is frequently a question of fact to be determined by the jury or trier of fact under the evidence, as where the evidence is conflicting or the time is not clearly provided and is a matter of inference from the testimony. On the other hand, if the evidence is undisputed and only one conclusion can be drawn therefrom, the time of the accrual of the cause of action is a question of law to be determined by the Court.

Osborne Enter., Inc. v. City of Chattanooga, 561 S.W.2d 160, 165 (Tenn. Ct. App. 1977) (quoting 54 C.J.S. Limitations of Actions, § 399(b), pp. 550-51); *accord Lowe v. Simpson*, 2000 WL 116036 (Tenn. Ct. App. January 28, 2000) (finding that only one conclusion could be drawn from the undisputed evidence, and, as a result, finding the question of the accrual of the cause of action to be a question of law). Therefore, before reviewing the trial court's denial of the motion for directed verdict, we must first determine whether the issue will be reviewed as a question of fact or a question of law.

Ms. Taylor's testimony on direct examination, in part pertinent to the statute of limitations issue, regarding her knowledge in 1993 and in 2000 is as follows:

Q. Now, Ms Taylor, you, apparently, at some point, found out about the waiver of premium benefit?

A. Yes, sir, I did.

Q. Do you know when that was?

A. November of 1993.

Q. November of '93. Now, Ms. Taylor, I asked you when you found out about the waiver of premium benefits.

A. Oh, that was after Clyde died.

Q. Tell me after he died how you found out about it.

A. I found out through Phyllis West.

Q. Now, what did you do? Is that the first time you knew about the waiver of premium benefits?

A. No, sir.

Q. Well, I just asked you how you found out about them, and you said through Phyllis West. And then I asked you was that the first time you know about them, and you say no.

A. The first time I knew about it was in 1993. And I had heard about a waiver from another police officer, and Clyde had just had two strokes, and [the police officer] said, "You need to call the benefit board. They have a waiver or something up there, and you need to call and inquire about it."

Ms. Taylor acknowledged that she first heard of the waiver of premium benefit in 1993, but asserted that she was unaware of any of the details about qualifying for it or its purpose until 2000 when she spoke with Ms. West. Ms. Taylor testified that in 1993 she spoke with Ms. Watkins, an employee at Metro's Benefit Board, who told her that Mr. Taylor did not qualify for the waiver of premium benefit; Ms. Taylor asserted that she was provided no explanation for her husband's ineligibility.

Ms. Taylor's testimony on cross examination, again in part pertinent to the statute of limitations issue, further clarified knowledge she possessed in 1993 and in 2000 is as follows:

Q. During your conversation with Ms. Watkins, did you tell her that your husband had been on disability for 13 months.

A. I believe I did.

Q. And that's when she indicated to you that your husband had only one year to apply for the waiver of premium?

A. Right.

Q. And one of the claims, as I understand it, one of the claims, one of your claims in this case, is that during that conversation, Mrs. Watkins gave you incorrect information?

A. Right.

Q. Is that the only time that you claim that you were given incorrect information?

A. As far as I know.

Q. But we do know that by at least November of 1993, you knew about the waiver of premium benefit, correct?

A. Yes.

Q. And, additionally, based on your testimony at the previous hearing, you knew that it would mean \$50,000 in benefits as opposed to \$7,500, correct?

A. Yes, sir.

Q. ...did you go back and ask Mr. Taylor why he didn't apply for the waiver of premium benefits? Did you ever have a conversation like that?

A. No, sir, because he didn't even know what I was talking about. He said they had never said anything about that at the benefit board.

Q. So you did go back and talk with him after the conversation with Ms. [Watkins]; is that correct?

A. I did go back and talk to my husband. He didn't know anything about the waiver of premium.

Q. So then if we go back to November of 1993, your husband expressed to you that he hadn't been informed about this benefit; is that your testimony?

A. Yes, he didn't know anything about it. He didn't know what a waiver of premium was.

Q. And that's based on a conversation you had with him in 1993, is that correct?

A. Yes.

From Ms. Taylor's entire testimony, it is clear that, in 1993, Ms. Taylor knew of the waiver of premium benefit and that it would increase the coverage of her husband's life insurance policy; that her husband was ineligible for the benefit because the time to apply for it had lapsed; and that, when Mr. Taylor went on disability, Metro did not inform him of the availability of the benefit. Metro does not dispute that Ms. Taylor did not learn of Metro's obligation to inform its employees

of the waiver of premium benefit until 2000.³ Since the evidence is not in dispute, and no inferences to be drawn from the evidence, the issue as to when the cause of action accrued is a question of law.⁴

Finding the accrual of the cause of action to be a question of law, we now review the trial court's denial of Metro's motion for directed verdict. Review of the trial court's conclusions of law is *de novo* with no presumption of correctness afforded to the trial court's decision. *See Kaplan v. Bugalla*, 199 S.W.3d 632, 635 (Tenn. 2006).

Metro asserts that the claim accrued in 1993 because, pursuant to the discovery rule, Mr. and Ms. Taylor should have exercised reasonable care and diligence to discover Metro's failure to satisfy its obligation under the Metropolitan Charter based on the knowledge they possessed in November of 1993. Ms. Taylor asserts that the cause of action accrued in 2000 when she discovered Metro's obligation to her husband and the resulting breach.⁵

"A breach of contract gives rise to a cause of action by the aggrieved party. The statute of limitations begins to run as of the date of the breach." *Greene v. THGC, Inc.*, 915 S.W.2d 809, 810 (Tenn. Ct. App. 1995). "[T]he cause of action... for the breach of a contract...accrues immediately upon the happening of...the breach, even though the actual damage resulting therefrom may not occur until some time afterwards." *State of Use of Cardin v. McClellan*, 85 S.W. 267, 269 (Tenn. 1905); *accord Leyen v. Dunn*, 461 S.W.2d 41, 42 (Tenn. Ct. App. 1970). However, this Court has held that certain situations exist in which the discovery rule would apply to toll the accrual of a cause of action:

...[I]t is not difficult to envision circumstances in which a party to a contract would not be aware that the other party has breached the contract. In those circumstances..., it would be unjust to hold that a plaintiff's claim for breach of contract accrues before the plaintiff knew or should have known that the contract had been breached.

Many courts now apply the discovery rule to breach of contract claims and hold that a cause of action for breach of contract begins to run when a party either discovers the breach or could have or should have discovered the breach through the exercise of reasonable judgment.

³ Metro contends, however, that lack of knowledge of a legal duty does not toll the statute of limitations.

⁴ *Osborne Enter., Inc. v. City of Chattanooga*, 561 S.W.2d 160, 165 (Tenn. Ct. App. 1977) (holding that "if the evidence is undisputed and only one conclusion can be drawn therefrom, the time of the accrual of the cause of action is a question of law to be determined by the Court."); *see also Lowe v. Simpson*, 2000 WL 116036 (Tenn. Ct. App. January 28, 2000).

⁵ Both parties agree that the applicable statute of limitations to this cause of action is Tenn. Code Ann. § 28-3-109 which states "[t]he following actions shall be commenced within six (6) years after the cause of action accrued:...(3) Actions on contracts not otherwise expressly provided for." Tenn. Code. Ann. § 28-3-109(a)(3).

Goot v. Metro. Gov't of Nashville and Davidson County, 2005 WL 3031638 at *11 (Tenn. Ct. App. Nov. 9, 2005).

“[T]he discovery rule is an equitable exception that tolls the running of the statute of limitations until the plaintiff knows, or in the exercise of reasonable care and diligence, should know that an injury has been sustained.” *Pero’s Steak and Spaghetti House v. Lee*, 90 S.W.3d 614, 621 (Tenn. 2002). “The plaintiff is deemed to have discovered the right of action when the plaintiff becomes aware of facts sufficient to put a reasonable person on notice that he or she has suffered an injury as a result of the defendant’s wrongful conduct.” *Pero’s Steak and Spaghetti House*, 90 S.W.3d at 621; *Roe v. Jefferson*, 875 S.W.2d 653, 657 (Tenn. 1994). “It is not required that the plaintiff actually know that the injury constitutes a breach of the appropriate legal standard in order to discover that he has a ‘right of action’...”. *Roe*, 875 S.W.2d at 657. As explained in *Roe v. Jefferson*, 875 S.W.2d 653, the discovery rule applies:

. . . in cases where the plaintiff does not discover and reasonably could not be expected to discover that he has a right of action. . . . The statute is tolled only during that period when the plaintiff has no knowledge at all that a wrong has occurred, and, as a reasonable person, is not put on inquiry.

875 S.W.2d at 656-7.

This Court, in the prior appeal in this case, held that the discovery rule, as applied to a breach of contract case, is applicable when the breach is inherently undiscoverable. *Goot*, 2005 WL 3031638 at *11. Inherently undiscoverable means that an “injured party is unlikely to discover the wrong during the limitations period despite due diligence...the wrong and injury must be unknown to the plaintiff because of their very nature and not because of any fault of the plaintiff.” *Id.* at *11 n. 31.

Mr. Taylor went on disability pension on September 1, 1992, and, consequently, had one year within which to apply for the waiver of premium benefit. The injury, i.e., the loss of his ability to qualify for the benefit, occurred as a result of Metro’s failure to notify him of the waiver of premium benefit by September 1, 1993; thus, Metro’s breach of its duty occurred on or before that date. Ms. Taylor testified that it was not until November of 1993 that she knew that the waiver of premium benefit existed; that her husband did not qualify for the benefit because he failed to apply for it within the one year time period; and that Metro did not inform her husband of the availability of the benefit. Applying the discovery rule, we find these facts to be sufficient to toll the accrual of the statute of limitations from September 1, 1993, until November 1993 when Ms. Taylor and her husband were placed on notice that they suffered an injury as a result of Metro’s alleged wrongful conduct. Consequently, Ms. Taylor had until November of 1999 within which to file suit.

There is nothing in the record to show that Metro’s breach was inherently undiscoverable to Mr. or Ms. Taylor or that either of them in the exercise of due diligence could not have discovered the wrong within the limitations period. Furthermore, the fact that Ms. Taylor was unaware of

Metro's obligation to inform her husband of the waiver of premium benefit does not prevent the discovery of the right of action. As *Roe v. Jefferson*, 875 S.W.2d 653 (Tenn. 1994) held, the discovery of a cause of action does not require the injured party to know that the injury constituted a breach of a legal obligation; a plaintiff is "deemed to have discovered the right of action if he is aware of facts sufficient to put a reasonable person on notice that he has suffered an injury as a result of wrongful conduct." 875 S.W.2d at 657.

In light of our resolution of this issue, there is no need to address the other issue presented by Metro.

CONCLUSION

For the reasons set forth above, the decision of the Circuit Court is VACATED and the case dismissed. The case is remanded to the trial court for collection of costs accrued below. Costs of this proceeding are assessed against Ms. Taylor, for which execution may issue if necessary.

RICHARD H. DINKINS, JUDGE